IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

R.S.A. No.2463 of 1986
Date of decision : 15.11.2006

Labhoo Ram (dead) through L.Rs.

....Appellant

Versus

Gram Panchayat of village Jalalpur & others

...Respondents

CORAM : HON'BLE MR.JUSTICE MAHESH GROVER

....

Present : Mr.G.S.Nagra, Advocate
for the appellant.

Mr. G.S.Jaswal, Advocate
for the respondents.

...

MAHESH GROVER, J.(Oral)

The present appeal has been filed by the plaintiff-appellant against the judgments dated 16.11.1984 passed by the learned Sub Judge Ist Class, Garhshankar and 29.5.1986 passed by the learned Addl.District Judge, Hoshiarpur.

Briefly stated, the facts of the case are that the plaintiff filed a suit against the respondents Gram Panchayat and others for mandatory injunction directing them to remove the obstruction caused by them by erecting walls and making constructions at site ABCD shown in red colour in the site plan in the passage of the plaintiff to the common wall situated in Khasra No.26 and common land bearing Khasra No.33, situated in village Jalalpur. It was pleaded that the appellant is the owner of land bearing Khasra No.25/5/1 measuring 16

marlas and 15/5/3 measuring 1 marla and the respondents have raised construction which is causing inconvenience to the appellant. It was further pleaded that the respondents have raised wall at the site about six years ago which is obstructing the natural flow of water and since he has been using the passage for the last 30 years he has acquired a right by way of easement thereof.

The suit was resisted by the respondents who denied the averments made by the appellant. It was pleaded that the construction had been raised by the inhabitants of the village and a Dharamshala had also been constructed which is for the benefit of all the persons. The right of easement was denied and it was pleaded that the appellant had no right on the said land as it belonged to the Gram Panchayat.

On the pleadings of the parties, the following issues were framed :-

1. Whether the plaintiff is entitled to the injunction as prayed for ? OPP
2. Whether the plaintiff has acquired a right of easement by way of prescription to pass towards east and to discharge the water of his plots towards east as alleged ? OPP
3. Whether the suit is not properly valued for the purpose of court fee and jurisdiction? OPD
4. Whether the plaintiff is estopped from suing as alleged? OPD
5. Whether the site plan produced by the plaintiff is

correct? OPP

6. Whether the suit is not within time?OPD

7. Relief.

The trial court after perusing the evidence adduced by the respective parties before it dismissed the suit vide judgment dated 16.11.1984 and in appeal the findings of the trial court were affirmed vide judgment dated 29.5.1986.

Mr. Nagra, learned counsel for the appellant while reiterating the facts was unable to show or formulate any substantial question of law which arose in the present appeal.

Both the courts have recorded a consistent finding that the appellant had failed to prove that he had ever acquired any right of easement as claimed by him. Besides, the construction of the Dharamshala which was being raised for the benefit of the entire village was established. The appellant failed to establish his right before the courts below as he did not even examine any witness from the village to corroborate his statement.

The apex court in **Madhavan Nair v. Bhaskar Pillai (dead) by LRs.** (2005) 10 Supreme Court Cases 553 and **G.Mahalingappa v. G.M.Savitha** (2005) 6 Supreme Court Cases 441 has held that where the findings recorded by the courts below are concurrent and no substantial question of law arises then there is no scope of interference by the High Court under the provisions of Section 100 of the Civil Procedure Code.

For the reasons mentioned above, the appeal is dismissed.

15.11.2006 (MAHESH GROVER)
JUDGE

dss